

BRB No. 98-1156

MICHAEL WEAVER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
PENN TERMINALS,)	
INCORPORATED)	DATE ISSUED: <u>April 28, 1999</u>
)	
and)	
)	
SIGNAL MUTUAL INSURANCE)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Approving Settlement of Paul H. Teitler,
Administrative Law Judge, United States Department of Labor.

Michael Weaver, Philadelphia, Pennsylvania, *pro se*.

John E. Kawczynski (Weber Goldstein Greenberg & Gallagher), Philadelphia,
Pennsylvania, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN,
Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Approving Settlement (98-LHC-0118) of Administrative Law Judge Paul H. Teitler rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). As claimant appeals without representation by counsel, we will review the administrative law judge's findings of fact and conclusions of law to determine whether they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e),

802.220. If so, they must be affirmed.

Claimant suffered a work-related knee injury on February 13, 1996, and thereafter filed a claim pursuant to the Act. Employer began making voluntary temporary total disability compensation payments to claimant on February 14, 1996, but terminated payments subsequent to April 22, 1997, and filed a notice of controversion on May 12, 1997. In a Decision and Order Approving Settlement, the parties agreed that claimant was entitled to a \$75,000 lump sum payment, as well as payment for all outstanding medical bills, including those of Dr. Gurijala, claimant's psychiatrist. In exchange for these payments, claimant agreed to waive "any claims against Employer and its Carrier for injuries to other parts of his body related to the February 13, 1996 incident but not specifically mentioned in this agreement" The settlement stated that claimant was represented by an attorney throughout the proceedings, that the settlement was adequate, and was not procured under duress. In addition, the administrative law judge found that the settlement was fair and in the best interest of claimant. *See* 33 U.S.C. §908(i)(1994); 20 C.F.R. §702.243(f).

On appeal, claimant, representing himself, challenges the administrative law judge's Decision and Order Approving Settlement, contending that he should be compensated for psychological injuries he suffered as a result of the February 13, 1996 injury. Claimant further alleges that his lump sum payment was not received within 10 days of the Decision and Order Approving Settlement. Employer responds, urging affirmance of the administrative law judge's Decision and Order Approving Settlement. Specifically, employer argues that Section 22 of the Act, 33 U.S.C. §922, prohibits modification of approved settlements pursuant to Section 8(i). With regard to claimant's allegation of late payment, employer asserts that the Board is without authority to decide this issue, as a finding of fact below has yet to be made. For the reasons that follow, we affirm the administrative law judge's Decision and Order Approving Settlement.

At the outset, we note that claimant's contentions are akin to a motion for modification under Section 22 of the Act, 33 U.S.C. §922. However, it is well-established that Section 8(i) settlements are final under the Act and may not be reopened pursuant to Section 22. *See, e.g., Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 26 (CRT) (5th Cir. 1986); *Rochester v. George Washington University*, 30 BRBS 233 (1997). Thus, an approved settlement terminates claimant's right to further compensation for his injury. *Olsen v. General Engineering and Machine Works*, 25 BRBS 169 (1991). In the instant case, by the terms of the approved settlement agreement, claimant waived his right to additional compensation through his acceptance of employer's offer of a lump sum of \$75,000. The medical evidence indicates that claimant's psychological condition was in existence at the time of the settlement. Moreover, the administrative law judge rationally found that the settlement was adequate and satisfied the requirements of Section 702.242 of the regulations, 20 C.F.R. §702.242. *See, e.g., Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230 (1993).

Accordingly, in light of the policy favoring the finality of settlements, and in the interest of justice, we affirm the administrative law judge's Decision and Order Approving Settlement. *See Porter v. Kwajalein Services, Inc.*, 31 BRBS 112 (1997), *aff'd on recon.*, 32 BRBS 56 (1998).

Claimant further alleges that he did not receive payment of the lump sum within 10 days of the Decision and Order Approving Settlement. Section 14(f) provides:

If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 921 of this title and an order staying payment has been issued by the Board or court.

33 U.S.C. §914(f). Compensation payable under an order becomes due on the day the order is filed with the district director, *see* 33 U.S.C. §§919(e), 921(a), and compensation payments must be made within 10 calendar days after the date they become due. *See Irwin v. Navy Resale Exchange*, 29 BRBS 77 (1995). When payment is sent by mail, the time of payment is the date payment is received by the payee and not the date it is mailed. *See, e.g., Sea-Land Service, Inc. v. Barry*, 41 F.3d 903, 29 BRBS 1 (CRT)(3d Cir. 1994), *aff'g* 27 BRBS 260 (1993).

As employer asserts, however, in the instant case, findings of fact have not been made below with regard to the issue of whether employer is liable for a Section 14(f) assessment. The Board lacks jurisdiction to address requests for the assessment of a Section 14(f) penalty. *See Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989); *Von Lindenbergh v. I.T.O. Corp. of Baltimore*, 19 BRBS 233 (1987). We therefore decline to consider claimant's request for a Section 14(f) assessment.¹

¹We note that pursuant to Section 18(a) of the Act, 33 U.S.C. §918(a), claimant may initiate enforcement proceedings before the district director in order to determine whether employer's payment is untimely and it is liable for an assessment under Section 14(f) of the Act. *See generally Brown v. Marine Terminals Corp.*, 30 BRBS 29 (1996)(*en banc*)(Brown and McGranery, JJ., dissenting on other grounds).

Accordingly, the Decision and Order Approving Settlement of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge